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DEC 01 2006

Technology Center 2100

In re Application of:
Elwyn B. DAVIES et al.
Application No. 09/460,556
Filed: December 14, 1999
For: A SYSTEM INDICATING THE
PRESENCE OF AN INDIVIDUAL OR
GROUP OF INDIVIDUALS

**DECISION ON PETITION
UNDER 37 CFR 1.181 TO
WITHDRAW HOLDING OF
ABANDONMENT**

This is a decision in response to the petition, filed on 14 June 2005, under 37 CFR 1.181 and MPEP § 711.03(c) requesting the withdrawal of the holding of abandonment in response to a Notice of Abandonment.

The petition is **DENIED**.

This application was held abandoned for applicant's failure to timely pay the required issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowability that was mailed on March 11, 2004. A Notice of Abandonment was mailed on July 22, 2004.

In support of the petition, petitioner submitted that (1) the Notice of Allowance was originally mailed to an incorrect address; and (2) as evidenced in the letter of November 1, 2004 from applicant's counsel, the examiner had indicated that no petition to revive was necessary in this application since the Notice of Allowance was mailed to an incorrect address.

A review of the application file, it reveals that applicant's representative, Mr. Richard Lehrer, failed to follow the guidelines set forth in MPEP § 601.03 which set forth the requirement for promptly notifying the U.S. Patent and Trademark Office (the Office) of any change of address for correspondence. It is noted that during the prosecution of this application, the Office received an amendment after final dated March 2, 2004 which included applicant's counsel new address (see page 11 of the amendment after final). The MPEP § 601.03 clearly states "the required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made. Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record." According to the Office records, applicant's counsel did not file the change of address notification until September 30,

2004 which was more than three (3) months from the mailing date of the Notice of Allowance and eventual abandonment of this application. Since the Notice of Allowance and Issue Fee (PTOL-85) was mailed to the proper address of record, at the time of mailing, it is determined that the Office did not fail to perform its function and applicant's untimely filing his change of address contributed to his failure to received the Notices of Allowance and Abandonment.

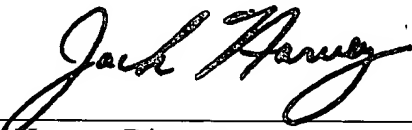
Pursuant to 37 CFR 1.316, the application was regarded as abandoned after June 11, 2004 for failure to timely pay the required issue fee, and examiner Harrell did not have the authority to waive the requirement to file a petition to revive in this application.

Accordingly, the petition is **DENIED**.

If the petitioner desires further review of this decision, he/she should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Otherwise, the petitioner may wish to consider filing a petition to revive under 37 CFR 1.137(b).

The required issue fee was received on November 4, 2004. Applicant should state such a payment of issue fee in the next petition.

Any inquiry concerning this decision should be directed to Vincent N. Trans whose telephone number is (571) 272-3613.



Jack Harvey, Director
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Computer Architecture, Software, and
Information Security